

ARTICLE 8**SITE PLAN AND SUBDIVISION REVIEW PROCEDURES****§ 8.01. WHEN REQUIRED; EXEMPTIONS.**

- A. **Site plan approval, when required.** Prior to the issuance of a building permit, demolition permit, zoning approval or certificate of occupancy for any development, a final site plan application shall be submitted to and approved by resolution of the Board in accordance with the requirements of this article, and all conditions precedent to said approval, including but not limited to the completion of required infrastructure improvements as set forth in § 8.18C, and/or the posting of performance guarantees for same, shall be complied with. Furthermore, the Board may require, as a condition of any approval, the withholding of permits and approvals pending the satisfactory completion of required improvements as set forth in § 8.18C and D. Notwithstanding the above, the following developments shall be exempt from the requirement of site plan review and approval:
1. individual lot applications for detached one or two-family dwelling unit buildings;
 2. subdivision applications for detached one or two-family dwelling unit buildings; provided that the Board may review site-related issues to determine that all of the lots proposed by the development plat are adaptable for their intended purposes and without danger to the general welfare;
 3. a proposed alteration that is 1) not a modification of utilization of a building, structure or property, as defined in Article 2 of this ordinance, and/or 2) not a change to the exterior dimensions of any existing building(s) or structure(s); provided that such determinations shall be made by the Zoning Officer;
 4. site improvements or activities limited to the following; provided that if such structures or activities are proposed in connection with an application that otherwise would require site plan approval, they shall be reviewed as part of the overall site plan application:
 - a. minor maintenance and repair of existing structures, as determined by the Zoning Officer;
 - b. wall signs and temporary signs;

- c. fences, freestanding walls and retaining walls, but excluding any such wall which is also a wall of a building; and
 - d. exempt antennas as defined in Article 2 of this ordinance;
 - 5. development undertaken by the Town of Westfield; and
 - 6. development otherwise exempt from the requirement of site plan approval by law.
- B. **Waiver of site plan approval requirement for other minor improvements.** Notwithstanding the requirement for site plan approval in Subsection A. above, site improvements up to one hundred (100) square feet in area may, if requested by the applicant, be waived by the Zoning Officer if he finds the following; provided, however, that in the event there is uncertainty regarding the following, the Zoning Officer shall refuse to grant such waiver request:
- 1. the proposed improvements conform with all applicable provisions of this Land Use Ordinance; and
 - 2. the proposed improvements will not negatively affect the use or development of the site in question, the immediate neighborhood or the community as a whole.
- C. **Subdivision approval, when required.** Prior to the filing of any plat, deed or other recorded instrument for the subdivision of land with the county recording officer, a final subdivision application shall be submitted to and approved by resolution of the Board in accordance with the requirements of this article, and all conditions precedent to said approval, including but not limited to the completion of required infrastructure improvements as set forth in § 8.18C, and/or the posting of performance guarantees for same, shall be complied with. Furthermore, the Board may require, as a condition of any approval, the withholding of permits and approvals pending the satisfactory completion of required infrastructure improvements as set forth in § 8.18C.
- D. **Board jurisdiction.** The resolution of the Zoning Board of Adjustment shall substitute for that of the Planning Board whenever the Zoning Board of Adjustment has jurisdiction over a subdivision or site plan pursuant to this ordinance.

§ 8.02. CLASSIFICATION OF SITE PLANS AND SUBDIVISIONS.

Applications for site plan and/or subdivision approval shall be classified as one or more of the following, as defined by this ordinance in Article 2:

- A. Conceptual site plan.

- B. Conceptual subdivision.
- C. Minor site plan.
- D. Minor subdivision.
- E. Preliminary major site plan.
- F. Preliminary major subdivision.
- G. Final site plan.
- H. Final subdivision.

§ 8.03. FILING OF APPLICATIONS.

Applications for site plan and/or subdivision approval shall be filed in accordance with the following procedures:

- A. An application for site plan or subdivision approval shall be filed with the Secretary of the Board having jurisdiction over the application. Required forms and checklists for the application shall be available in the office of the Secretary for the respective Board, and shall be provided to the applicant prior to formal submission of an application.
- B. Applications must be accompanied by the required drawings, documents, fees and other data as required by the completeness checklists in Article 9. The applicant may produce other documents, records, or testimony at the hearing to substantiate, clarify or supplement the previously filed maps and documents.
- C. All information required by the checklists in Article 9 shall be submitted at least twenty-eight (28) days before the date of the public hearing at which the application will be heard.

§ 8.04. SIMULTANEOUS APPLICATION.

The Planning Board or the Zoning Board of Adjustment, as applicable, shall have the power to review and approve or deny conditional uses, site plans and subdivisions simultaneously, including both preliminary and final approval, when appropriate, and shall have the power to review and approve or deny variance requests simultaneously with any of the above applications, without the developer being required to make further application to the Board, or the Board being required to hold further hearings.

§ 8.05. COMPLETENESS DETERMINATION.

Upon the filing of an application, it shall be reviewed to determine compliance with the submission requirements of Article 9. The following procedure shall apply:

- A. An application for development shall be complete for purposes of commencing the applicable time period for action by the Board when so certified by the Board or its authorized committee or designee.
- B. The applicant shall be notified in writing whether the application has been determined complete or incomplete by the Board or its authorized committee or designee within forty-five (45) days of the date of submission of an application. An application shall be determined complete if all of the items required by the appropriate completeness checklists in Article 9 have been submitted.
- C. In the event that the agency, committee or designee does not certify the application to be complete or incomplete within forty-five (45) days of the date of its submission, the application shall be deemed complete upon the expiration of said forty-five (45) day period.
- D. The applicant may request that one or more of the submission requirements in Article 9 be waived. A written request, explaining the basis for such request(s) must be submitted for such waiver requests in order to be considered. The Board or its authorized committee shall grant or deny the waiver request within forty-five (45) days of receipt of the written request. The following provisions shall apply to the grant of such waivers:
 - 1. Waivers may be granted from submission requirements for plan information or supplemental documentation that may be irrelevant or excessive in the case of a particular application and which are not necessary to determine the substantive merits of an application.
 - 2. No waiver shall be granted from the requirement to pay all applicable fees, escrow deposits, taxes or assessments, nor from any other procedural requirement established by any other law.
 - 3. The above provisions shall not be construed to effect the procedures for granting relief (i.e., exceptions) from the design standards of Article 10, or the procedures for granting variance or other relief as set forth in Article 7.
- E. Nothing herein shall be construed as diminishing the applicant's obligation to prove in the application process that he is entitled to approval of the application. The Board may subsequently require correction of any information found to be in error and submission of additional information not specified in this ordinance or any revisions in the accompanying documents, as well as the submission of any information previously waived, as

are reasonably necessary to make an informed decision as to whether the requirements necessary for approval of the application have been met. The application shall not be deemed incomplete for lack of any such additional information or any revisions in the accompanying documents so required by the Board.

§ 8.06. GENERAL REVIEW PROCEDURES.

The following general review procedures shall apply, unless the provisions for specific types of applications indicate a contrary procedure:

- A. After an application has been determined to be complete, the Secretary shall forward a copy of the application to each Board member for public hearing, if such hearing is required pursuant to Article 4. Hearings shall be conducted in accordance with the procedures outlined in Article 4.
- B. After an application has been determined to be complete, or when the application has been scheduled for public hearing, whichever occurs sooner, the Secretary shall refer the application to the following persons or agencies for report and recommendation to the Board:
 - 1. Any consultants which have been directed by the Board to review and comment on the application. The consultant shall provide a report and/or testify, at the discretion of the Board, prior to the Board's decision; provided that this shall not extend the time period within which the Board shall be required to act;
 - 2. The Westfield Historic Preservation Commission, if the property for the application is located in a historic district designated by the zoning regulations, or is designated as a historic landmark on the Zoning Map, Official Map or by the historic preservation element of the Master Plan. Failure to refer the application to the Commission shall not invalidate any hearing or proceeding. The Commission may provide its advice, which shall be conveyed through its delegation of one its members or staff to testify orally at the hearing on the application and to explain any written report which may have been submitted; and
 - 3. The Architectural Review Board, if required, who shall review and comment on the application; and
 - 4. Any other Town, County, State and Federal officials and agencies having appropriate jurisdiction and as directed by the Board. Such referral to other governmental officials or agencies shall not relieve the applicant of the responsibility of applying independently to and receiving approval from such agencies as required by law.

- C. The Board shall grant or deny an application within the following time periods, or within such further time as may be consented to by the applicant. The time period required below for action shall begin on the date that an application is determined to be complete.
1. Conceptual site plan and conceptual subdivision: no time limit.
 2. Minor site plan: forty-five (45) days.
 3. Preliminary major site plan, ten (10) acres of land or less and ten (10) or fewer dwelling units: forty-five (45) days.
 4. Preliminary major site plan, more than ten (10) acres of land or more than ten (10) dwelling units: ninety-five (95) days.
 5. Final site plan: forty-five (45) days.
 6. Minor subdivision: forty-five (45) days.
 7. Preliminary major subdivision, ten (10) or fewer lots: forty-five (45) days.
 8. Preliminary major subdivision, more than ten (10) lots: ninety-five (95) days.
 9. Final major subdivision: forty-five (45) days.
 10. Conditional use site plan: ninety-five (95) days.
 11. Any application involving a variance: one hundred and twenty (120) days.
 12. Simultaneous or consecutive applications: Whenever an applicant seeks simultaneous approval of a subdivision, site plan, conditional use, variance request and/or direction for issuance of a permit, the longest time period for action by the Board, whether it be for subdivision, site plan, conditional use, variance or direction for issuance of a permit, shall apply to the simultaneous application. In the event that the applicant elects to submit separate consecutive applications, the time period for action provided above shall apply to each individual application.
- D. If the Board requires any substantial amendments in the layout of improvements proposed by the developer that have been the subject of a hearing, an amended application for development shall be submitted and proceeded upon, as in the case of the original application for development.

- E. In reviewing applications for site plan, subdivision and/or variance approval, the Board shall determine whether any existing nonconforming conditions involving the subject property will exacerbate, intensify, alter, affect or in some way result in a significant impact on the proposed use, structure or land. If the Board finds that no substantial impact or detriment will result, the Board shall so state in its findings of fact in the resolution for the application, without the need for such existing nonconforming conditions to meet the criteria established by N.J.S.A. 40:55D-34, 36,51a, 51b, 70c and 70d and this ordinance for variances or exceptions, as applicable. If the Board finds that substantial impacts or detriments will result, however, the application shall not be approved unless and until the applicant agrees to mitigate or eliminate such impacts or detriments. The foregoing shall not be construed to alter the review procedures nor the criteria for granting variances or exceptions for violations proposed by the development or existing illegally on the subject property.
- F. If the proposed development complies with this ordinance and the Municipal Land Use Law, the Board shall grant site plan and/or subdivision approval.
- G. **[Added 10-02-01 by Ord. 1788]** Notwithstanding any other provision of the Land Use Ordinance of the Town of Westfield to the contrary, the Board shall not approve any application for a major subdivision or a minor subdivision unless the applicant demonstrates, and the Board specifically finds, that the proposed development:
1. represents the most appropriate use and development of the site;
 2. preserves and enhances, to the maximum extent possible, the natural features and the physical environment of the site and the surrounding area in the manner most consistent with the applicable provisions of the Town's Master Plan and Zoning Ordinance;
 3. promotes a desirable visual environment which is harmonious with the character of the existing development and which enhances the character of the surrounding neighborhood and the Town as a whole, and avoids adversely affecting the value of adjacent or nearby properties;
 4. does not substantially depart from the character of the existing development;
 5. will not lead to increases in population density and concentration that would adversely affect the public health, safety, and general welfare;
 6. promotes a desirable visual environment;

7. ensures adequate light, air, and open space;
8. will be visually compatible with the character of existing improvements on the abutting lots and with the character of the surrounding neighborhood;
9. incorporates the best features of design and relates the type, design, and layout of the surrounding development to the particular site;
10. will not create or exacerbate topographic conditions that are incongruous with the topography of the surrounding neighborhood;
11. will not substantially alter the character of the existing development in the surrounding neighborhood;
12. will not substantially impair the intent and purpose of the Master Plan and the Zoning Ordinance; and
13. can be approved without substantial detriment to the public good.

§ 8.07. CONCEPTUAL SITE PLANS AND SUBDIVISIONS.

At the request of the developer, the Planning Board shall grant an informal review of a concept plan for a development for which the developer intends to prepare and submit an application for development. Submission of a concept plan is optional with the developer. Informal review of a concept plan is intended to enable the Board and the developer to discuss and evaluate principles and potential problems involved before the applicant has gone to the expense of completing detailed engineering drawings as required for formal plan review and approval. The procedures for filing, determination of completeness and review shall be as provided by this article; provided, however, that a public hearing shall not be required for a concept plan. The developer shall not be bound by any concept plan for which review is requested, and the Planning Board shall not be bound by any such review.

§ 8.08. MINOR SITE PLANS.

In addition to the procedures for filing, completeness determination and review provided by this article, the following provisions shall apply to minor site plans:

- A. If an application for minor site plan approval is classified as other than a minor site plan, the applicant will be so notified. No further action by the Board will be required, and the applicant will be required to follow the procedures for filing an application for preliminary and final major site plan approval.

- B. A minor site plan shall be referred to the Site Plan and Subdivision Committee for review and recommendations; provided, that any minor site plan which requires any variances shall be reviewed by the full Board, and a public hearing shall be held in accordance with the procedures set forth in Article 4.
- C. Minor site plan approval shall be deemed to be final approval of the plan by the Board, provided that the Board may condition such approval on terms ensuring the provision of improvements pursuant to § 5.05, § 8.18 and § 8.19, including but not limited to the posting of performance and maintenance guarantees and the withholding of permits and approvals as set forth in § 8.18B. No certificate of occupancy or zoning approval shall be issued prior to the satisfactory completion of all improvements, except as may be provided otherwise by § 8.18B.
- D. If the application is approved, the approved plan shall be signed by the Chairman and Secretary of the Board; provided that the signatures of the Chairman and Secretary shall not be affixed until the developer has posted any guarantees that may be required pursuant to § 5.05.
- E. Prior to the Board returning the signed minor site plan to the applicant, the applicant shall submit three (3) copies of the approved plan to the Secretary.
- F. The zoning requirements and general terms and conditions, whether conditional or otherwise, upon which minor site plan approval was granted, shall not be changed for a period of two (2) years after the date of minor site plan approval. The Board shall grant an extension of this period for a period determined by the Board but not exceeding one (1) year from what would otherwise be the expiration date, if the developer proves to the reasonable satisfaction of the Board that the developer was barred or prevented, directly or indirectly, from proceeding with the development because of delays in obtaining legally required approvals from other governmental entities and that the developer applied promptly for and diligently pursued the approvals. The developer shall apply for this extension before: (1) what would otherwise be the expiration date, or (2) the ninety-first (91st) day after the date on which the developer receives the last of the legally required approvals from the other governmental entities, whichever occurs later.
- G. Minor site plan approval shall expire three (3) years from the date of the resolution of approval if the building permit or other permit necessary to complete the site development which was the subject of the approval has not been obtained.

§ 8.09. MINOR SUBDIVISIONS.

In addition to the procedures for filing, completeness determination and review provided by this article, the following provisions shall apply to minor subdivisions:

- A. If an application for minor subdivision approval is classified as other than a minor subdivision, the applicant will be so notified. No further action by the Board will be required, and the applicant will be required to follow the procedures contained herein for filing an application for preliminary and final major subdivision approval.
- B. In reviewing a minor subdivision application, the Board may accept a plat not in conformity with the Map Filing Law, provided that if the developer chooses to file the minor subdivision as provided herein by plat rather than deed, such plat shall conform with the Map Filing Law.
- C. A minor subdivision shall be referred to the Site Plan and Subdivision Committee for review and recommendations; provided, that any minor subdivision which requires any variances shall be reviewed by the full Board, and a public hearing shall be held in accordance with the procedures set forth in Article 4.
- D. Minor subdivision approval shall be deemed to be final approval of the subdivision by the Board, provided that the Board may condition any such approval on terms ensuring the provision of improvements pursuant to § 5.05, § 8.18 and § 8.19, including but not limited to the posting of performance and maintenance guarantees, and the withholding of permits and approvals as set forth in § 8.18B. No certificate of occupancy or zoning approval shall be issued prior to the satisfactory completion of all improvements, except as may be provided otherwise by § 8.18B.
- E. If the application is approved, and if all conditions have been fulfilled, the applicant shall, within thirty (30) days of the fulfillment of all such conditions, submit his deed or plat for signature by the Chairman and Secretary of the Board; provided that the signatures of the Chairman and Secretary shall not be affixed until the developer has posted any guarantees that may be required pursuant to § 5.05. If the deed or plat is not submitted within said thirty (30) day period, any such approval shall lapse and be of no force and effect; provided, however, that the applicant may, for good cause shown, obtain an extension either before or after the lapse of said thirty (30) day period within the reasonable exercise of the Board's judgment.
- F. Prior to the Board returning the signed minor subdivision plat or deed to the applicant, the applicant shall submit three (3) copies of the approved plat or deed to the Secretary.

- G. Except as provided otherwise below, approval of a minor subdivision shall expire one hundred and ninety (190) days from the date on which the resolution of Town approval is adopted unless within such period a plat in conformity with such approval and the provisions of the Map Filing Law, or a deed clearly describing the approved minor subdivision is filed by the developer with the county recording officer, the Town Engineer and the Town Tax Assessor. Any such plat or deed accepted for such filing shall have been signed by the Chairman and Secretary of the Board. No subdivision plat shall be accepted for filing by the county recording officer until it has been approved by the Planning Board as indicated on the instrument by the signature of the Chairman and Secretary of the Planning Board or a certificate has been issued pursuant to § 8.14 or § 8.22.
- H. The Board may extend the one hundred and ninety (190) day period for filing a minor subdivision plat or deed if the developer proves to the reasonable satisfaction of the Board: 1) that the developer was barred or prevented, directly or indirectly, from filing because of delays in obtaining legally required approvals from other governmental or quasi-governmental entities, and 2) that the developer applied promptly for and diligently pursued the required approvals. The length of the extension shall be equal to the period of delay caused by the wait for the required approvals, as determined by the Board. The developer may apply for the extension either before or after what would otherwise be the expiration date.
- I. The zoning requirements and general terms and conditions, whether conditional or otherwise, upon which minor subdivision approval was granted, shall not be changed for a period of two (2) years after the date on which the resolution of minor subdivision approval is adopted, provided that the approved minor subdivision shall have been duly recorded as provided in this section.

§ 8.10. PRELIMINARY MAJOR SITE PLANS AND PRELIMINARY MAJOR SUBDIVISIONS.

In addition to the procedures for filing, completeness determination and review provided by this article, the following provisions shall apply to preliminary major site plans and preliminary major subdivisions:

- A. If the application is approved, the site plan or plat, as applicable, shall be signed by the Chairman and Secretary of the Board.
- B. Prior to the Board returning the approved preliminary subdivision plat or site plan drawings to the applicant, the applicant shall submit three (3) copies of the approved site plan or plat to the Secretary.

- C. Preliminary approval of a major site plan or preliminary major subdivision shall, except as provided otherwise below, confer upon the applicant the following right for a three (3) year period from the date on which the resolution of preliminary approval is adopted:
1. That the general terms and conditions on which preliminary approval was granted shall not be changed, including but not limited to use requirements; layout and design standards for streets, curbs and sidewalks; lot size; yard dimensions and off-tract improvements; and, in the case of a site plan, any on-tract improvements required to be installed, except that nothing herein shall be construed to prevent the Town from modifying by ordinance such general terms and conditions of preliminary approval as relate to public health and safety;
 2. That the developer may construct the required infrastructure improvements set forth in § 8.18C, post performance guarantees for same, or any combination of the foregoing, prior to the grant of final approval by the Board.
 3. That the applicant may submit for final approval on or before the expiration date of preliminary approval the whole or a section or sections of the preliminary major site plan or preliminary major subdivision, as the case may be; and
 4. That the applicant may apply for and the Board may grant extensions of such preliminary approval for additional periods of at least one (1) year, but not to exceed a total extension of two (2) years, provided that if the design standards have been revised by ordinance, such revised standards may govern.
- D. In the case of a preliminary major site plan or preliminary major subdivision for an area of fifty (50) acres or more, the Board may grant the rights referred to above for such period of time, longer than three (3) years, as shall be determined by the Board to be reasonable taking into consideration 1) the number of dwelling units and nonresidential floor area permissible under preliminary approval, 2) economic conditions, and 3) the comprehensiveness of the development. The applicant may apply for thereafter and the Board may thereafter grant an extension to preliminary approval for such additional period of time as shall be determined by the Board to be reasonable taking into consideration 1) the number of dwelling units and nonresidential floor area permissible under preliminary approval, and 2) the potential number of dwelling units and nonresidential floor area of the section or sections awaiting final approval, 3) economic

conditions and 4) the comprehensiveness of the development; provided that if the design standards have been revised, such revised standards may govern.

- E. Whenever the Board grants an extension of preliminary major site plan or preliminary major subdivision approval as indicated above and the preliminary approval has expired before the date on which the extension is granted, the extension shall begin on what would otherwise be the expiration date. The developer may apply for the extension either before or after what would otherwise be the expiration date.

§ 8.11. FINAL MAJOR SITE PLANS AND FINAL MAJOR SUBDIVISIONS.

In addition to the procedures for filing, completeness determination and review provided by this article, the following provisions shall apply to final major site plans and final major subdivisions:

- A. The Board shall grant final approval if the detailed drawings, specifications and estimates of the application for final approval conform to the standards established by ordinance for final approval, the conditions of preliminary approval and, in the case of a major subdivision, the standards prescribed by the Map Filing Law. No final approval shall be granted unless all required infrastructure improvements pursuant to § 8.18C have been satisfactorily completed, or unless performance guarantees for same have been posted and accepted pursuant to § 5.05. Furthermore, the Board may require the withholding of permits and approvals as set forth in § 8.18B, pending the completion of required infrastructure and site improvements. No certificate of occupancy or zoning approval shall be issued prior to the satisfactory completion of all improvements, except as may be provided otherwise by § 8.18B.
- B. In the case of a residential cluster, the Board may permit minimal deviations from the conditions of preliminary approval necessitated by a change of conditions beyond the control of the developer since the date of preliminary approval without the developer being required to submit another application for development for preliminary approval.
- C. If the application is approved, and if all conditions have been fulfilled, the applicant shall, within thirty (30) days of the fulfillment of all such conditions, submit his plat or plan for signature by the Chairman and Secretary of the Board; provided that the signatures of the Chairman and Secretary shall not be affixed until the developer has posted any guarantees that may be required pursuant to § 5.05. If the plat or plan is not submitted within said thirty (30) day period, any such approval shall lapse and be of no force and effect; provided, however, that the

applicant may, for good cause shown, obtain an extension either before or after the lapse of said thirty (30) day period within the reasonable exercise of the Board's judgment.

- D. Prior to the signing and return of a final major subdivision plat or final major site plan, the applicant shall submit three (3) copies of the approved plat to the Secretary. In the case of a final major subdivision, the applicant shall also submit a translucent copy of the drawing suitable for making prints.
- E. Final approval of a major subdivision shall expire ninety-five (95) days from the date of signing of the plat unless within such period the plat shall have been duly filed by the developer with the county recording officer. The Board may for good cause shown extend the period of recording for an additional period not to exceed one hundred and ninety (190) days from the date of signing of the plat.
- F. The Board may extend the ninety-five (95) day or one hundred and ninety (190) day filing period if the developer proves to the reasonable satisfaction of the Board 1) that the developer was barred or prevented, directly or indirectly, from filing because of delays in obtaining legally required approvals from other governmental or quasi-governmental entities and 2) that the developer applied promptly for and diligently pursued the required approvals. The length of the extension shall be equal to the period of delay caused by the wait for the required approvals, as determined by the Board. The developer may apply for a filing extension either before or after the original expiration date.
- G. No subdivision plat shall be accepted for filing by the county recording officer until it has been approved by the Planning Board as indicated on the instrument by the signature of the Chairman and Secretary of the Planning Board or a certificate has been issued pursuant to § 8.14 and § 8.22. The signatures of the Chairman and Secretary of the Planning Board shall not be affixed until the developer has posted the guarantees required pursuant to § 5.05.
- H. The zoning requirements applicable to the preliminary approval first granted and all other right conferred upon the developer by preliminary approval, whether conditionally or otherwise, shall not be changed for a period of two (2) years after the date on which the resolution of final approval is adopted, provided that in the case of a major subdivision the rights conferred herein shall expire if the plat has not been duly recorded within the time period provided above.

- I. Notwithstanding any other provisions of this ordinance, the granting of final approval to the development or section of the development terminates the time period of protection for the preliminary approval granted to the same development or section of the development.
- J. If the developer has followed the standards prescribed for final approval, and, in the case of a subdivision, has duly recorded the plat as required above, the Board may extend such period of protection for extensions of one (1) year, but not to exceed three (3) extensions.
- K. In the case of a subdivision or site plan for a planned development of fifty (50) acres or more, conventional subdivision or site plan for one hundred and fifty (150) acres or more, or site plan for development of a nonresidential floor area of two hundred thousand (200,000) square feet or more, the Board may grant the rights referred to in subsection H. above for such period of time, longer than two (2) years, as shall be determined by the Board to be reasonable taking into consideration 1) the number of dwelling units and nonresidential floor area permissible under final approval, 2) economic conditions and 3) the comprehensiveness of the development. The developer may apply for thereafter, and the Board may thereafter grant, an extension of final approval for such additional period of time as shall be determined by the Board to be reasonable taking into consideration 1) the number of dwelling units and nonresidential floor area permissible under final approval, 2) the number of dwelling units and nonresidential floor area remaining to be developed, 3) economic conditions and 4) comprehensiveness of the development.
- L. The developer may apply for an extension either before or after what would otherwise be the expiration date. Whenever the Board grants an extension of final approval pursuant to subsection J. or K. above and the final approval has expired before the date on which the extension is granted, the extension shall begin on what would otherwise be the expiration date.
- M. Site plan approval shall expire three (3) years from the date of the resolution of approval, or after any extension which may have been granted pursuant to subsections J. or K. above, whichever is later, if the building permit or other permit necessary to complete the site development which was the subject of the approval has not been obtained.

§ 8.12. RESIDENTIAL CLUSTER.

In addition to the procedures for filing, completeness determination and review provided by this article, the following provisions shall apply to applications which involve residential cluster:

- A. **Variation in density or intensity.** The standards for permitting variation in intensity in a residential cluster shall be as set forth in § 11.03F and § 18.05. In the case of cluster development, the maximum number of lots which may be permitted shall be computed by providing the Board with a plan which shows a layout of the property as it could be developed as a conventional subdivision in conformance with all the regulations of this ordinance. Said layout plan shall provide information sufficient to determine compliance with the provisions of this ordinance and to determine the suitability of all lots for development. The cluster development shall be entitled to the same number of lots that the said conforming conventional subdivision would be entitled to, taking into account good planning, zoning, and engineering principles as determined by the Board.
- B. **Open space ownership and maintenance.** Any subdivision which involves residential cluster shall either dedicate any resulting open space land to the Town or shall make provision for the establishment of an open space organization which shall own and maintain said open space for the benefit of owners or residents of the development. Any area to be dedicated to the Town for open space purposes under the terms of this section shall be at a location and shape as approved by the Planning Board. If any open space areas are to be owned and maintained by an organization for the benefit of owners and residents of the development, then the following provisions shall apply:
1. Such organization shall not be dissolved and shall not dispose of any open space, by sale or otherwise, except to an organization conceived and established to own and maintain the open space for the benefit of such development. Thereafter, such organization shall not be dissolved or dispose of any of its open space without first offering to dedicate the same to the Town of Westfield.
 2. In the event that such organization shall fail to maintain the open space in reasonable order and condition, the Planning Board may serve written notice upon such organization or upon the owners of the development setting forth the manner in which the organization has failed to maintain the open space in reasonable condition. Said notice shall include a demand that such deficiencies of maintenance be cured within thirty five (35) days thereof, and shall state the date and place of a hearing thereon. The hearing shall be held within fifteen (15) days of the notice.
 3. At the hearing on deficiencies in maintenance, the Planning Board may modify the terms of the original notice as to deficiencies and may give a reasonable extension of time not to exceed sixty-five (65) days within which they shall be cured.

4. If the deficiencies set forth in the original notice or in the modification thereof shall not be cured within thirty-five (35) days or any permitted extension thereof, the Town, in order to preserve the open space and maintain the same for a period of one (1) year, may enter upon and maintain such land. Said entry and maintenance shall not vest in the public any rights to use the open space except when the same is voluntarily dedicated to the public by the owners.
5. Before the expiration of the year in paragraph (4) above, the Planning Board shall, upon its initiative or upon the request of the organization theretofore responsible for the maintenance of the open space, call a public hearing upon fifteen (15) days written notice to such organization and to the owners of the development shall show cause why such maintenance by the Town shall not, at the election of the Town, continue for a succeeding year.
6. If at the hearing the Planning Board shall determine that such organization is ready and able to maintain said open space in a responsible condition, the Town shall cease to maintain said open space at the end of said year.
7. If at the hearing the Planning Board shall determine such organization is not ready and able to maintain said open space in a reasonable condition, the Town may, at its discretion, continue to maintain said open space during the next succeeding year, subject to a similar hearing and determination, in each year thereafter. The decision of the Planning Board in any such case shall constitute a final administrative decision subject to judicial review.
8. The cost of such maintenance by the Town shall be assessed pro rata against the properties within the development that have a right of enjoyment of the open space in accordance with assessed value at the time of imposition of the lien, and shall become a lien and tax on said properties and be added to and be a part of the taxes to be levied and assessed thereon, and enforced and collected with interest by the same officers and in the same manner as other taxes.

C. **Findings for residential cluster.** Prior to the approval of any residential cluster, the Board must find the following facts and conclusions:

1. that departures by the proposed development from the zoning regulations otherwise applicable to the subject property conform to the zoning regulations authorizing such departures by residential clusters in § 11.03F and § 18.05;

2. that the proposals for maintenance and conservation of the common open space are reliable, and the amount, location and purpose of the common open space are adequate;
3. That provisions through the physical design of the proposed development for public services, control over vehicular and pedestrian traffic, and the amenities of light and air, recreation and visual enjoyment are adequate;
4. That the proposed residential cluster will not have an reasonably adverse impact upon the area in which it is proposed to be established; and
5. In the case of a proposed development which contemplates construction over a period of years, that the terms and conditions intended to protect the interests of the public and of the residents, occupants and owners of the proposed development in the total completion of the development are adequate.

§ 8.13. CONDITIONAL APPROVALS.

The Board, in granting any approval, may require reasonable conditions designed to further the intent and purpose of this ordinance and the Municipal Land Use Law. The following provisions shall apply to conditional approvals:

- A. **Time for compliance with conditions.** Whenever any application for development is approved subject to specified conditions, said conditions shall be fulfilled within one hundred and ninety (190) days of the date on which the resolution of approval was adopted. Exempt from this requirement are those conditions pertaining to other governmental approvals as indicated in Subsections D, E and F below. Notwithstanding the above, the Board may, in appropriate circumstances, specify a longer period of time within which any specific condition must be fulfilled. In addition, the applicant may, for good cause shown, apply for, and the Board may grant, extensions of time within which such conditions must be fulfilled as the Board may deem appropriate under the circumstances. Applications for such extension must be made prior to the expiration of the period within which conditions were previously required to be fulfilled.
- B. **Procedure for demonstrating compliance.** All conditions of approval shall be complied with in the following manner:
 1. Proof that applications have been filed with all other agencies having jurisdiction over any aspect of the application for development shall forthwith be filed with the Board.

2. The fulfillment of all other conditions shall forthwith be reported in writing to the Board, which may cause such reports to be verified in an appropriate manner.
- C. **Effect of failure to comply.** Only upon fulfillment of all conditions precedent of preliminary approval shall any site clearing, grading, construction of required on-tract or off-tract improvements, or other development be permitted. Only upon fulfillment of all conditions precedent of final approval shall any subdivision map or site plan be signed or any required building permit, occupancy permit, zoning approval or other required approval be issued. Failure to comply with any and all specified conditions of approval shall have the following effects:
1. Conditions precedent. In the case of specified conditions intended to be fulfilled before the approval becomes effective, failure to fulfill any such condition within the required time period shall cause said conditional approval to lapse and become null and void.
 2. Conditions subsequent. In the case of specified conditions which by their terms are incapable of being fulfilled, or are not required to be fulfilled prior to the final approval of the application, the performance of which are not guaranteed by bonds or securities of any type, failure to fulfill any such condition within the required time period shall be grounds for the issuance of a stop work order by the enforcing official and the withholding of any certificate of occupancy or any other approval until such conditions are fulfilled.
- D. **County Planning Board approval.** Whenever review or approval of an application by the County Planning Board is required pursuant to section 5 of the County Planning Act, in the case of a subdivision, or section 8 of the County Planning Act, in the case of a site plan, the Board shall condition any approval that it grants upon timely receipt of a favorable report on the application by the County Planning Board or approval by the County Planning Board by its failure to report thereon within the required time period.
- E. **Other governmental approvals.** In the event that development proposed by an application requires an approval by a governmental agency other than the Planning Board, the Zoning Board of Adjustment or the County Planning Board, the Board shall, in appropriate instances, condition its approval upon the subsequent approval of such governmental agency; provided that the Board shall make a decision on any application within the time periods provided in this ordinance or within an extension of such period as has been agreed to by the applicant unless the Board is prevented or relieved from so acting by the operation of law.

- F. **Barrier to development due to legal action.** In the event that a developer submits an application for development that is barred or prevented, directly or indirectly, by a legal action instituted by any State agency, political subdivision or other party to protect the public health and welfare or by a directive or order issued by any State agency, political subdivision or court of competent jurisdiction to protect the public health and welfare, the Town agency shall process such application for development in accordance with the Municipal Land Use Law and this ordinance, and if such application for development complies with this ordinance, the Town agency shall approve such application conditioned on removal of such legal barrier to development.

§ 8.14. DEFAULT APPROVALS.

Failure of the Planning Board or the Zoning Board of Adjustment to act within the periods prescribed herein shall constitute an approval of the application, and a certificate of the Board Secretary as to the failure of the Board to act shall be issued on the request of the applicant, and it shall be sufficient in lieu of the written endorsement or other evidence of approval, as required by the Municipal Land Use Law, and shall be so accepted by the county recording officer for purposes of filing subdivision plats. The following provisions shall apply whenever an applicant wishes to claim approval of his application for development by reason of the failure of the Board to grant or deny approval within the time period provided herein:

- A. The applicant shall provide notice of the default approval to the Board and to all those entitled to notice by personal service or certified mail of the hearing on the application for development; but for purposes of determining who is entitled to notice, the hearing on the application for development shall be deemed to have required public notice pursuant to § 4.04.
- B. The applicant shall arrange publication of a notice of the default approval in the official newspaper of the Town, if there be one, or in a newspaper of general circulation in the Town.
- C. The applicant shall file an affidavit of proof of service and publication with the Board Secretary, who in the case of a minor subdivision or final approval of a major subdivision, shall be the officer who issues certificates pursuant to § 8.22.

§ 8.15. EXTENSIONS OF APPROVALS DUE TO DELAY IN OBTAINING OTHER GOVERNMENTAL APPROVALS.

The following shall apply to requests for extension of any approval from the Planning Board or Zoning Board of Adjustment due to delays in obtaining approvals from other government agencies:

- A. The Board shall grant an extension of any site plan, subdivision or variance approval for a period determined by the Board, but not exceeding one (1) year from what would otherwise be the expiration date, if the developer proves to the reasonable satisfaction of the Board that the developer was barred or prevented, directly or indirectly, from proceeding with the development because of delays in obtaining legally required approvals from other governmental entities and that the developer applied promptly for and diligently pursued the approvals.
- B. A developer shall apply for this extension before: 1) what would otherwise be the expiration, or 2) the ninety-first (91st) day after the date on which the developer receives the last of the legally required approvals from the other governmental entities, whichever occurs later.
- C. An extension granted pursuant to this section shall not preclude the Board from granting any other extensions permitted herein or by any other law.

§ 8.16. TOLLING OF RUNNING OF PERIOD OF APPROVAL DUE TO LEGAL ACTION.

In the event that, during the period of approval heretofore or hereafter granted to an application for development, the developer is barred or prevented, directly or indirectly, from proceeding with the development otherwise permitted under such approval by a legal action instituted by any State agency, political subdivision or other party to protect the public health and welfare or by a directive or order issued by any State agency, political subdivision or court of competent jurisdiction to protect the public health and welfare and the developer is ready, willing and able to proceed with said development, the running of the period of approval under this ordinance shall be suspended for the period of time said legal action is pending or such directive order is in effect.

§ 8.17. DEVELOPER'S AGREEMENTS; RESTORATION GUARANTEES.

A developer's agreement shall be required for all applications involving infrastructure as set forth in § 8.18C, off-tract improvements as set forth in § 8.19 or site grading in accordance with the following provisions:

- A. Prior to any construction and coincident with the furnishing of the performance guarantee by the developer, the developer shall enter into a developer's agreement with the Town of Westfield incorporating all of the terms and conditions of approval as required by the Planning Board or Zoning Board of Adjustment.

- B. At the discretion of the Town, the developer may be required to provide a restoration guarantee as part of the agreement that can be used by the Town to restore the property to a safe condition in the event that the developer abandons the development project. The intent of such guarantee is to ensure that the property in its unfinished development state does not adversely affect the public safety or adversely impact the environment.
- C. No cutting of trees or vegetation, and no excavation, earth moving or installation of infrastructure shall be permitted until said developer's agreement is executed between the Town and the developer.
- D. No Town official shall sign the plan of an approved subdivision, site plan or variance plan until any required developer's agreement has been executed, the form and amount of any performance guarantee has been approved and received, the required deposit for inspection fees has been received, and until all conditions precedent to approval have been satisfied, and any other special terms and conditions have been met.

§ 8.18. REQUIRED IMPROVEMENTS.

- A. **Completion of infrastructure improvements or performance guarantee required prior to final approval.** All infrastructure improvements required in Subsection C below, except for the top course of street pavement and street trees, shall be installed and any required off-tract improvements shall be installed or a pro rata share of such off-tract improvements paid prior to final approval of any subdivision, site plan or variance; provided, however, that the developer may provide, and the Town shall accept a performance guarantee in accordance with § 5.05 for the required infrastructure improvements set forth in Subsection C below in lieu of the installation of said improvements prior to final approval.
- B. **Completion of improvements required prior to issuance of permits.** The Board, in granting final subdivision, final site plan or variance approval, may, in appropriate circumstances, condition the issuance of building permits, demolition permits, certificates of occupancy or zoning approvals, as applicable, upon: 1) the timely installation of required infrastructure improvements set forth in Subsection C below, notwithstanding any performance guarantee which may have been provided, and 2) upon the timely installation of required site improvements set forth in Subsection D below. In no case, however, shall a certificate of occupancy or zoning approval be issued for any development prior to the satisfactory completion of all required improvements set forth in Subsections C and D below; provided, however, that the Board may, in appropriate circumstances, authorize the issuance of a certificate of occupancy or zoning approval prior

to the completion of the top course of street pavement, street trees and on-site landscaping if a performance guarantee for same is provided in accordance with § 5.05.

C. **Required infrastructure improvements.** The following improvements shall be required for all major subdivisions and major site plans; provided that the Board may require any or all of the following for minor subdivisions, minor site plans and variances if, in the opinion of the Board, the improvements are necessary to provide adequate infrastructure to service the development. All of the following improvements shall be designed in accordance with the provisions in Article 10 of this ordinance:

1. street pavement and street curbs;
2. sidewalks on both sides of all new through streets and along any side of existing through streets upon which the subject property has frontage; provided no sidewalk shall be required when neither of the abutting properties have sidewalks along their frontage;
3. driveway aprons;
4. street lighting;
5. street signs, street traffic signs and striping;
6. street trees;
7. monuments, if required by the Map Filing Law;
8. potable water facilities, and connections to same, within the street right-of-way, public easements or other public areas;
9. water facilities for fire-fighting purposes within the street right-of-way, public easements or other public areas;
10. sanitary sewer facilities, and connections to same, within the street right-of-way, public easements or other public areas; including but not limited to pipes, inlets, headwalls, detention or retention basins or structures;
11. storm drainage facilities, including but not limited to pipes, inlets, headwalls, detention and retention basins or structures, and connections to same, all within the street right-of-way, public easements or other public areas; and any on site grading which may be necessary for the proper functioning of the public system;

12. electric, telephone, gas and cable television service, as applicable, and connections to same, within the street right-of-way, public easements or other public areas;
 13. any related improvements that may be necessary to provide any of the improvements required above;
 14. any off-tract improvements required pursuant to the provisions in § 8.19; and,
 15. any improvements required by the New Jersey Residential Site Improvements Standards.
- D. Required site improvements. All applications for site plan approval shall be required to provide any and all site improvements as necessary to comply with the provisions of this ordinance, including but not necessarily limited to Articles 10 through 19.

§ 8.19. OFF-TRACT IMPROVEMENTS.

As a condition of preliminary approval and prior to any construction or the filing of an application for final approval of a subdivision or site plan, the applicant shall have made cash payments or other forms of payment acceptable to the Town, and/or installed with the consent of the Town, for any required off-tract improvements. The following provisions shall apply:

- A. **Determination of required improvements.** The Planning Board or the Zoning Board of Adjustment, as applicable, shall determine the nature of off-tract improvements to be required. Such determinations shall not be inconsistent with the Town Master Plan circulation and utility elements, and may include street and related improvements, water, sewer and drainage facilities, and easements therefor.
- B. **Determination of total cost of improvements.** The cost of installation of the required off-tract improvements shall be determined by the Planning Board with advice of appropriate Town agencies and officials.
- C. **General criteria in determining proportion of costs to be paid by applicant.** The proportion of the total cost to be paid by the applicant for off-tract improvements shall be determined by the Board, with the assistance of the appropriate Town agencies, based on the following criteria:
 1. the total cost of the off-tract improvements;
 2. the increase in market values of the property affected and any other benefits conferred;
 3. the needs created by the application;

4. population and land use projections for the general area of the applicant's property and other areas to be served by the off-tract improvements;
5. the estimated time of construction of the off-tract improvements;
6. the condition and periods of usefulness of the off-tract improvements, which periods may be based upon the criteria of N.J.S.A. 40A:2-22; and,
7. any other reasonable criteria the Board feels is necessary to protect the public health, safety and welfare.

D. **Criteria in determining proportion of costs to be paid by applicant for specific improvements.** In addition to and notwithstanding the provisions of subsection C. above, the following criteria may be considered in determining the proportion of the total cost to be paid by the applicant for the following specific off-tract improvements:

1. Proportion of costs for street pavement, curbs, sidewalks, shade trees, streetlights, street signs, traffic lights and related improvements and easements therefor may also be based upon the anticipated increase of traffic generated by the development. In determining such traffic increase, the Board may consider traffic counts, existing and projected traffic patterns, quality of roads and sidewalks in the area and other factors related to the need created by the development and the anticipated benefit thereto.
2. Proportion of costs for drainage facilities may also be based upon the drainage conditions created by or affected by a particular development, considering:
 - a. the percentage relationship between the acreage of the development and the acreage of the total drainage basin;
 - b. the use of the site and the amount of area to be covered by impervious surfaces on the site; and
 - c. the use, condition or status of the remaining area of the drainage basin.
3. Proportion of costs for water supply and distribution facilities may also be based upon the additional facilities necessitated by the total anticipated water use requirements of the development and other properties in the general area benefiting therefrom.
4. Proportion of costs for sanitary sewer facilities may also be based upon the proportion that the total anticipated volume of sewage effluent of the development and other

properties connected to the new facility bears to the existing capacity of existing sewerage facilities. The calculation shall include the lines and other appurtenances leading to and servicing the development property. Consideration may also be given to the types of effluent and particular problems requiring special equipment or added costs for treatment. In the event that the applicant's property shall be permitted to be connected to existing sewer facilities, the applicant shall pay a charge or be assessed in accordance with law.

- E. **Manner of implementation.** After the estimated total cost of construction and the application's proportion of the total cost has been determined, the Town Council shall determine whether the off-tract improvement is to be implemented by the Town as a general or local improvement, or by the applicant under a formula providing for partial reimbursement by the Town for benefits to properties other than the subdivision or site plan.
- F. **Deposit for improvements.** When the manner of implementation has been determined by the Town Council, the applicant may be required to provide a cash deposit or other deposit acceptable to the Town, in accordance with the following:
1. If the improvement is to be constructed by the Town as a general improvement, the applicant shall be required to deposit an amount equal to the difference between: a) the total cost of the improvement and b) the estimated amount, if less than the total cost, that all properties which are to be serviced by the improvement, including the subject property, will be specifically benefited by the improvement.
 2. If the improvement is to be constructed by the Town as a local improvement, the applicant shall be required to deposit an amount equal to: a) the amount specified in paragraph (1) above, plus b) the estimated amount that the subject property will be specifically benefited by the improvement.
 3. If the improvement is to be constructed by the applicant, the applicant shall be required to deposit an amount equal to the estimated cost of the improvement, less an offset for benefits to properties other than the subject property.
- G. **Payment for applicant's share of the cost of improvement.** The applicant's proportion of the total cost of off-tract improvements shall be paid by the applicant to the Town Treasurer, who shall provide a suitable depository therefor, and such funds shall be used only for the off-tract improvements for which they are deposited, or for other improvements serving the same purpose. In the event that the amount of the deposit

pursuant to subsection F. above is less than the applicant's proportion of the total cost determined pursuant to subsections C. and D. above, then the applicant shall be required to pay said proportion. In the event that the amount of the deposit pursuant to subsection F. above is more than the applicant's proportion of the total cost determined pursuant to subsections C. and D. above, then the Town shall reimburse the applicant, or his successors or assigns, for the difference between the deposit and the applicant's proportion.

- H. **Refund of payments for failure of Town to make improvements.** If after a period of ten (10) years from the date of payment by an applicant for off-tract improvements to be constructed by the Town, construction of such off-tract improvements has not been initiated, the Town shall refund any and all deposits made by the applicant for such improvements, together with the accumulated interest or other income earned on the deposit, if any.
- I. **Dispute of amount of applicant's contribution.** If the applicant and the Board cannot agree on the total cost or the applicant's proportion of the total cost of the off-tract improvement, or on the determination made by the officer or Board charged with the duty of making assessments as to special benefits, and if the off-tract improvement is to be constructed as a local improvement, no approval shall be granted for the application. Where a developer pays the amount determined as his proportion of the total cost of the improvement under protest, he shall institute legal action within one (1) year of such payment in order to preserve the right to a judicial determination as to the fairness and reasonableness of such amount.
- J. **Assessments of properties.** Upon receipt from the applicant of his proportion of the total cost of the off-tract improvement, the Town may adopt a local improvement assessment ordinance for the purpose of construction of the off-tract improvements based upon the actual cost thereof. Any portion of the cost of the improvements not defrayed by a deposit by the applicant may be assessed by the Town against any property owners who benefit from the improvement. Any assessments made against the applicant or his successors or assigns for benefits conferred shall be first offset by a credit for the payment made by the applicant pursuant to subsection G. above. The applicant or his successors or assigns shall not be liable for any part of any assessment for such improvements unless the assessment exceeds the credit for payment previously made, and then only to the extent of the deficiency.
- K. **Credit for work performed.** In the event that the applicant, with the Town's consent, decides to install and construct the off-tract improvement, or any portion thereof, the certified cost shall be treated as a credit against any future assessment for

that particular off-tract improvement or portion thereof constructed by the Town in the same manner as if the applicant had made a payment pursuant to subsection G. above.

- L. **Installation of improvements by applicant.** At the option of the Town, and with the consent of the applicant, the Town may enter into a contract with the applicant providing for the construction of off-tract improvements by the applicant upon contribution by the Town of the remaining unallocated portion of the cost of the off-tract improvement. In the event that the Town so elects to contribute to the cost and expense of installation of the off-site improvements by the applicant, the portion contributed by the Town shall be subject to possible certification and assessment as a local improvement against benefiting property owners in the manner provided by law, if applicable.
- M. **Compliance with design criteria.** Should the applicant and the Town enter into a contract for the construction and erection of the off-tract improvement to be done by the applicant, he shall observe all requirements and principles of this ordinance in the design of such improvements.

§ 8.20. INSPECTION OF IMPROVEMENTS AND CONSTRUCTION.

All improvements required by the Board, except electric, telephone, cable television, street lighting, gas and streets not under the jurisdiction of the Town of Westfield shall be installed under the supervision and inspection of the Town Engineer. Other improvements shall be installed under the supervision and inspection of the authority having jurisdiction over such improvements. No construction work covering the required improvements shall be commenced without the developer first notifying the Town Engineer that said construction work is about to take place. Such notice shall be given, in writing, to the Town Engineer at his office at least one (1) week before the commencement of such work. No required underground improvements shall be covered until inspected and approved by the Town Engineer.

§ 8.21. SELLING BEFORE FINAL SUBDIVISION APPROVAL.

If, before final subdivision approval has been granted, any person transfers or sells or agrees to transfer or sell, except pursuant to an agreement expressly conditioned on final subdivision approval, as owner or agent, any land which forms a part of a subdivision for which Town approval is required by this ordinance or any other ordinance pursuant to the Municipal Land Use Law, such person shall be subject to a penalty not to exceed one thousand dollars (\$1,000.00), and each lot disposition so made may be deemed a separate violation.

In addition to the foregoing, the Town may institute and maintain a civil action for injunctive relief and to set aside and invalidate any conveyance made to such a contract of sale if a certificate of compliance has not been issued in accordance with § 8.22. In any such action, the transferee, purchaser or grantee shall be entitled to a lien upon the portion of the land from which the subdivision was made that remains in the possession of the developer or his assigns or successors, to secure the return of any deposits made or purchase price paid, and also, a reasonable search fee, survey expense and title closing expense, if any. Any such action must be brought within two (2) years of the date of the recording of the instrument of transfer, sale or conveyance of said land or within six (6) years, if unrecorded.

§ 8.22. CERTIFICATION OF SUBDIVISION APPROVAL.

The prospective purchaser, prospective mortgagee, or any other person interested in any land which forms part of a subdivision, or which formed part of such a subdivision subsequent to August 1, 1973, may apply in writing to the Board Secretary for the issuance of a certificate certifying whether or not such subdivision has been approved by the Board. The following provisions shall apply to the issuance of said certificates:

- A. Such application shall contain a diagram showing the location and dimension of the land to be covered by the certificate and the name of the owner thereof.
- B. The Board Secretary shall make and issue such certificate within fifteen (15) days after the receipt of such written application and the fees therefor.
- C. Each such certificate shall be designated a "certificate as to approval of subdivision of land", and shall certify:
 1. whether there exists in the Town a duly established planning Board and whether there is an ordinance controlling subdivision of land adopted under the authority of the Municipal Land Use Law;
 2. whether the subdivision, as it relates to the land shown in said application, has been approved by the Planning Board and, if so, the date of such approval and any extensions and terms thereof, showing that subdivision of which the lands are a part is a validly existing subdivision; and,
 3. whether such subdivision, if the same has not been approved, is statutorily exempt from the requirement of approval as provided in the Municipal Land Use Law at N.J.S.A. 40:55D-7, definition of "subdivision".
- D. The Board Secretary shall charge a fee for such certificate as provided in Article 5 of this ordinance, which fee shall be paid by the Board Secretary to the Town of Westfield.

- E. The Board Secretary shall keep a duplicate copy of each certificate, consecutively numbered, including a statement of the fee charged, in a binder as a permanent record of his office.
- F. Any person who shall acquire for a valuable consideration an interest in the lands covered by any such certificate of approval of a subdivision in reliance upon the information contained therein shall hold such interest free of any right, remedy or action which could be prosecuted or maintained by the Town pursuant to the provisions of § 8.21.
- G. If the Board Secretary fails to issue the same within fifteen (15) days after receipt of an application and fees therefor, any person acquiring an interest in the lands described in such application shall hold such interest free of any right, remedy or action which could be prosecuted or maintained by the Town pursuant to § 8.21.
- H. Any such application addressed to the Town Clerk shall be deemed to be addressed to the proper designated officer and the Town shall be bound thereby to the same extent as though the same was addressed to the designated official.

§ 8.23. EXCEPTION IN APPLICATION OF SUBDIVISION OR SITE PLAN REGULATION.

The Board, when acting upon applications for minor site plan, minor subdivision, preliminary major site plan or preliminary major site plan approval, shall have the power to grant such exceptions from the requirements in this ordinance for site plan or subdivision approval as may be reasonable and within the general purpose and intent for the provisions for site plan and subdivision review and approval, if the literal enforcement of one or more provisions of this ordinance regulating site plan and subdivision applications is impracticable or will exact undue hardship because of peculiar conditions pertaining to the land in question. Notwithstanding the above, there shall be no deviation from the zoning regulations, Articles 11 through 19 of this ordinance, authorized by this section. Furthermore, and not with standing the above, requests for exceptions and waivers of the New Jersey Residential Site Improvement Standards shall be subject to the procedures and limitations in said standards.

§ 8.24. RESERVATION OF PUBLIC AREAS.

If the Town Master Plan or Official Map provides for the reservation of designated streets, public drainage ways, flood control basins, or public areas within the proposed development, the Board may require that such streets, ways, basins or areas be shown on the plat in locations and sizes suitable to their intended uses before approving the subdivision or site plan.

§ 8.25. PAYMENT OF TAXES AND ASSESSMENTS PRIOR TO APPROVAL.

It shall be a condition of any approval by a Town agency pursuant to this ordinance that proof be submitted that no taxes or assessments for local improvements are due or delinquent on the property for which any approval is sought.

§ 8.26. DISCLOSURE OF OWNERSHIP REQUIRED.

A corporation or partnership applying to the Planning Board or Zoning Board of Adjustment, as provided herein, for permission to subdivide a parcel of land into six (6) or more lots, or applying for a variance to construct a multiple dwelling of twenty-five (25) or more family units or for approval of a site to be used for commercial purposes, shall disclose the ownership of the corporation or partnership as follows:

- A. The corporation shall list the names and addresses of all stockholders or individual partners owning at least ten percent (10%) of its stock of any class or at least ten percent (10%) of the interest in the partnership, as the case may be.
- B. If a corporation or partnership owns ten percent (10%) or more of the stock of a corporation, or ten percent (10%) or greater interest in a partnership, subject to disclosure pursuant to this section, that corporation or partnership shall list the names and addresses of its stockholders holding ten percent (10%) or more of its stock or of ten percent (10%) or greater interest in the partnership, as the case may be, and this requirement shall be followed by every corporate stockholder or partner in a partnership, until the names and addresses of the non-corporate stockholders and individual partners exceeding the ten percent (10%) ownership criterion established in this section have been listed.
- C. The Planning Board or Zoning Board of Adjustment shall not approve any application of any corporation or partnership that does not comply with the provisions of this section.
- D. Any corporation which conceals the names of the stockholders owning ten percent (10%) or more of its stock, or of the individual partners owning a ten percent (10%) or greater interest in the partnership, as the case may be, shall be subject to a fine of one thousand dollars (\$1,000.00) to ten thousand dollars (\$10,000.00) which shall be recovered in the name of the Town of Westfield in any court of record in the State in a summary manner pursuant to The Penalty Enforcement Law.

§ 8.27. APPROVALS BINDING.

Any site plan or subdivision approved by the Board pursuant to this article shall be binding upon the applicant and his heirs, executors, successors or assigns. Any deviation from an approved site plan or subdivision, or any failure to adhere to the conditions of approval shall be deemed a violation of this ordinance and shall be subject to the enforcement and penalties prescribed by this ordinance.